

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES McCONICO, JR.,	:	
Petitioner,	:	
v.	:	CIVIL ACTION 09-0322-CG-M
GRANTT CULLIVER,	:	
Respondent.	:	

ORDER

After due and proper consideration of all pleadings in this file, and a de novo determination of those portions of the Recommendation to which objection is made¹, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is adopted as the opinion of this Court.

It is **ORDERED** that this petition be **DENIED** and that this action be **DISMISSED**.

DONE and ORDERED this 5th day of October, 2009.

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE

¹ The court notes that petitioner's objection points out that he filed his petition pursuant to 28 U.S.C. § 2241, not § 2254. However, the magistrate judge's reasoning is still valid. Whether petitioner cited § 2241 or § 2254 as his jurisdictional basis does not change the fact that this is not a challenge to his underlying conviction, only to his conditions of confinement. Jurisdiction is therefore proper only under §1983. The court will not construe his petition as having been filed pursuant to §1983 because McConico has already filed such a petition with this court alleging substantially identical grounds, in which relief was denied. See. S.D. AL Civil Action No. 08-168, McConico v. Allen et al.